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MOHD AZMAN YAACOB v. TENAGA NASIONAL BHD

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
AZIMAH OMAR JCA
AZMI ARIFFIN JCA

B

[CIVIL APPEAL NO: D-02(NCVC)(W)-673-04-2023]
5 FEBRUARY 2025

Abstract – *In order to prove the obtainment of wayleave to erect electricity transmission towers and power lines across plots of land, the burden lies on Tenaga Nasional Bhd ('TNB') that it has complied with one of the following procedures: (i) wayleave procedures under s. 53 of the Electricity Act 1949 ('Act') (now s. 11 of the Electricity Supply Act 1990 ('ESA')). In this instance, once the procedures are complied with, TNB shall be deemed to have obtained a valid wayleave; or (ii) wayleave agreement under s. 56 of the Act (now s. 15 of the ESA). This instance provides for 'saving' or 'exception' wherein the right of entry and wayleave is mutually negotiated and codified into an agreement and parties are exempted from complying with the procedures under s. 53 of the Act. The entire pre-requisites and procedures under s. 53 should not override a wayleave obtained via a wayleave agreement entered under s. 56 of the Act.*

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TORT: *Trespass – Trespass to land – Erection of electricity transmission towers and power lines – Wayleave obtained in 1979 – Whether complied with guidelines for transmission lines – Requisite wayleave procedures under Electricity Act 1949 – Whether obtained wayleave via notification under s. 53 – Whether State Authority's cooperation and involvement sufficiently proper – Whether failure to endorse wayleave upon instrument document of title justified – Whether trespass proven*

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STATUTORY INTERPRETATION: *Construction – Statutes – Electricity Act 1949 – Wayleave procedures – Wayleave obtained in 1979 – Law at that time did not require endorsement of wayleave onto instrument document of title – Whether wayleave complied with law at that time*

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Circa 1978, the respondent, Tenaga Nasional Bhd ('TNB') – at that time Lembaga Letrik Negara ('LLN') – had commenced a project for the primary objective of providing basic electricity supply to the public especially in the rural areas of Kelantan. To achieve this public objective, TNB/LLN would have to necessarily erect electricity transmission towers and power lines across plots of land in Kelantan. In compliance with the guidelines for transmission lines, TNB opted to obtain the requisite statutory wayleave *via* one of the two procedures prescribed under the Electricity Act 1949 ('Act') being the procedure of wayleave *via* notification under s. 53 of the Act, as

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opposed to by way of wayleave agreement under s. 56 of the Act. Section 53(1) of the Act clothes LLN with the conditional authority to enter and erect structures or apparatuses upon any private land which are necessary for the purposes of supplying electricity. TNB, in due compliance with the procedures under s. 53 of the Act, having identified that the subject land would be affected by the project, proceeded with an application for the permission of the State Authority ('SA') to proceed with the wayleave procedure against all the affected lands and sought the assistance of the SA to serve the statutory notices in the Form prescribed under the Fourth Schedule of the Act ('statutory notice') to all landowners of which the addresses were within the SA's record. The SA undertook to serve all of the statutory notices. Thereafter, past the 14 days statutory days for objection by any landowner, in the absence of any objections against the wayleave, LLN/TNB was deemed to have legally obtained a right of entry and right for wayleave over the lots affected by the project. Upon obtaining the wayleave, LLN/TNB entered the subject land and erected the necessary electrical transmission towers and lines in furtherance of the project. The subject land was later divided into five separate lots. Approximately 38 years since the obtainment of the wayleave, the appellant became the registered proprietor of one of the subdivided lot. The electrical tower and lines had already been erected on the subdivided lot at the time the appellant purchased the subdivided lot. Thus, the appellant had purchased the subdivided lot despite his own full knowledge that there was already in existence LLN/TNB's electrical tower and lines erected upon a portion of the subdivided lot. Upon the appellant's ownership over the subdivided lot, the appellant applied for a planning permission for a proposed layout plan for the development of nine units of terraced houses on the subdivided lot. In response, the planning authority informed the appellant of its conditional approval (pre-conditioned and subject to the preservation of the original 132 feet reserve area for TNB's electrical towers and lines originally obtained *via* the wayleave procedure *circa* 1978 to 1979). Dissatisfied with the conditions placed by the planning authority, the appellant appealed to TNB requesting that the reserve area be cut down to half from 132 feet to a mere 66 feet. TNB rejected the appellant's request and insisted on the preservation of the 132 feet reserve area obtained *via* the wayleave. The appellant, *via* its surveyor, submitted another appeal, this time, to the planning authority against TNB's insistence on the 132 feet of reserve area, which was also rejected. Following the rejection by the planning authority, the appellant commenced a suit at the High Court primarily citing that TNB had never lawfully obtained any wayleave and that they had trespassed and continuously trespassed onto the appellant's subdivided lot. The appellant's claim was dismissed by the High Court. Hence, this appeal. The issue that arose for the court's consideration was whether the High Court was correct in finding that TNB had duly complied with all of the requisites and statutory procedures under s. 53 of the Act to obtain and maintain its wayleave on the appellant's subdivided lot.

Held (dismissing appeal with costs)
Per Azimah Omar JCA delivering the judgment of the court:

(1) Wayleave is a land right for TNB to have right of way to enter and erect electrical structures for the purposes of supplying electricity under the prevailing law at the time. The granting of the wayleave is conditional to specific requisites and procedures. Wayleave could be obtained: (i) by initiating the procedures ('wayleave procedures') enumerated within s. 53 of the Act, and upon compliance of the procedures, TNB shall be deemed to have obtained a valid wayleave; or (ii) by the same Act which provides for 'savings' or 'exception' in cases where the right of entry and wayleave could be mutually negotiated and codified into an agreement ('wayleave agreement'), prescribed under s. 56 of the Act. The burden was on TNB to prove that either all the requisites and procedures of the wayleave procedure had been complied with or prove the existence of the supposed wayleave agreement. It was certainly not incumbent upon TNB to prove both at the same time. (paras 29-31 & 33)

(2) Since TNB had pleaded that it had obtained a wayleave *via* the wayleave procedures, they need only to prove that they had duly complied with all the requisites and procedures under s. 53 of the Act. Under sub-s. (2) of s. 53, it is a statutory requirement that the SA be involved in the wayleave procedure as it was incumbent upon TNB to first apply for and obtain the SA's permission. The SA had clearly confirmed that the statutory notices had been duly served to all the affected landowners. Thus, the procedures undertaken by TNB with the cooperation and involvement of the SA were sufficiently proper and were in full compliance of s. 53 of the Act at the time. (paras 39, 41 & 44)

(3) There was no compensation paid under the wayleave procedure specifically because: (i) the TNB structures would not affect the use and utility of the subject land, categorised as an agricultural land with an express condition to be used as a rice plantation; (ii) despite the SA's service of the statutory notice to the landowners and the SA's call to enquire into the landowners' objections, there were no objections mounted by any of the landowners as against the wayleave and even as against the non-offer of compensation; and (iii) the fact that 38 years had passed since the initial entry by TNB without any objections or appeal for compensation whatsoever by the previous landowners resoundingly proved that it was more probable than not that the previous owners had full knowledge and notice of the wayleave and still had no objections against the non-offer of compensation by TNB. Hence, there was nothing inherently improper or malicious from the non-payment of compensation by TNB to impugn the validity of the wayleave. (paras 46 & 47)

(4) The wayleave was obtained in 1979, and at the material time, the law did not statutorily require for wayleaves to be endorsed upon the instrument document title of the subject land. Since TNB's entry into the subject land was statutorily justified under the prevailing Act at the time, TNB had not and could not have trespassed or continuously trespassed upon the appellant's subdivided lot. TNB had duly complied with all the requisites and statutory procedures under s. 53 of the Act to obtain and maintain its wayleave over of the appellant's subdivided lot. (paras 45, 49 & 50)

Case(s) referred to:

Fairise Odyssey Sdn Bhd v. Tenaga Nasional Bhd [2014] CLJU 842; [2014] 1 LNS 842 HC ***(refd)***

Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Bhd [2018] 10 CLJ 281 CA ***(refd)***

Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Bhd [2019] 8 CLJ 20 FC ***(refd)***

Mahani Desa & Yang Lain lwn. Tenaga Nasional Bhd [2021] CLJU 1567; [2021] 1 LNS 1567 HC ***(refd)***

Oakfield Enterprises Sdn Bhd v. Tenaga Nasional Bhd [1998] CLJU 430; [1998] 1 LNS 430 HC ***(refd)***

Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v. Tenaga Nasional Bhd; Ng Ah Boon (Third Party) [2010] 1 CLJ 625 HC ***(refd)***

Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd [2000] 1 CLJ 695 CA ***(refd)***

Legislation referred to:

Electricity Act 1949 (repealed), ss. 53(1), (2), (4), 56

Electricity Supply Act 1990, ss. 11, 14(1), 15

For the appellants - Wan Jawahir Harun & Mohd Khuzaimi Mohd Salleh; M/s Wan Jawahir & Takiyuddin

For the respondent - David Mathew, David Ng Yew Kiat & Ananthan Moorthi; M/s Seteven Thiru & Sudhar Partnership

[Editor's note: Appeal from High Court, Civil Suit No: DA-22NCVC-10-02-2019 (affirmed).]

Reported by S Barathi

JUDGMENT

Azimah Omar JCA:

Introduction

[1] The appeal before us is a claim for trespass by a subsequent landowner against the respondent, Tenaga Nasional Berhad ('TNB') for existing electrical transmission towers and transmission lines which were erected across the subject land prior to the appellant's subsequent purchase and ownership of a subdivided portion of subject land.

[2] Essentially, the appellant ('Mohd Azman bin Yaacob') contended that TNB had not lawfully obtained an 'izin lalu' or 'wayleave' under s. 53 of the Electricity Act 1949 (now s. 11 of the Electricity Supply Act 1990) and s. 56 of the Electricity Act 1949 (now s. 15 of the Electricity Supply Act 1990).

[3] On the other hand, TNB contended that there was no trespass or continuing trespass as they had appropriately obtained a wayleave from the previous registered proprietor of the subject land *via* the proper compliance of statutory procedures prescribed under s. 53 of the Electricity Act 1949 ('1949 Act') *circa* 1979 approximately 38 years before the appellant's registered proprietorship over a subdivided portion of the subject land.

[4] The High Court had dismissed the appellant's claim and thus, the appellant filed the present appeal before us. In any case, before we delve into the substance of our deliberations, it is necessary to state the underlying facts of the case.

Brief Facts

[5] *Circa* 1978, (TNB – at that time Lembaga Letrik Negara ('LLN') "the respondent") had commenced a project (known as Aliran Elektrik 33kV dari Machang ke Pasir Puteh, Kelantan) for the primary objective of providing basic electricity supply to the public especially in the rural areas of Kelantan. To achieve this public objective, TNB/LLN ('the respondent/LLN/TNB') would have to necessarily erect electricity transmission towers and power lines across plots of land in Kelantan.

The Respondent's Obtainment Of Wayleave Well Before The Appellant's Registered Proprietorship Of A Subdivided Portion Of The Subject Land

[6] It had long been the respondent's standard practice that the requirement for reserve area for 33kV transmission lines, must necessarily be an area of 132 feet (or two chain rentice) (as per TNB's guideline in Medium Voltage bre Overhead Line Handbook: Chapter 8 – General Installation).

[7] To comply with the guideline (and to legally obtain the necessary reserve area from private landowners), the respondent had opted to obtain the requisite statutory wayleave *via* one of the two procedures prescribed under the Electricity Act 1949 being the the procedure of wayleave *via* notification under s. 53 of the Electricity Act 1949 (as opposed to the other procedure by way of wayleave agreement under s. 56 of the Electricity Act 1949).

[8] Section 53(1) of the Electricity Act 1949 clothes LLN (now TNB) with the conditional authority to enter and erect structures or apparatuses upon any private land which are necessary for the purposes of supplying electricity:

> Section 53. Power to enter land for purposes of construction
>
> (1) Subject as hereinafter provided, *whenever it is necessary so to do for the purpose of installing any system of distribution of energy under this Act, the Board or a licensee may lay, place or carry on, under or over any land, other than State land, such supply lines and may erect in or upon any land, other*

> *than State land, such posts and other apparatus as may be necessary or proper for the purposes of the Board installation or licensed installation,* as the case may be, and may take such other action as may be necessary to render the installation safe and efficient, paying full compensation in accordance with section 58 to all persons interested for any disturbance, damage or disability that may be caused thereby; ... (emphasis added)

[9] This authority is conditional upon full compliance of all the requisites and procedures as laid down in the subsections of the same provision of the 1949 Act:

> (2) *Before entering on any land for the purpose specified in subsection (1), the Board or the licensee as the case may be, shall give notice stating as fully and accurately as possible the nature and extent of the acts intended to be done. The notice shall be substantially in the form set out in the Fourth Schedule,* and may, with the permission of the State Authority, specify a date upon which the State Authority will enquire into any objections that have been made as hereinafter provided.
>
> (3) *The aforesaid notice shall be given:-*
>
> (a) in the case of alienated land, *to the registered owner or occupier* …
>
> (4) *Any of the persons mentioned in subsection (3) may, within fourteen days of the receipt of the notice therein referred to, lodge an objection to the intended acts of the Board or licensee, as the case may be.* The objection may be made to the Collector of Land Revenue, either verbally or in writing, and the Collector shall give notice of the objection to the State Authority and to the Board or licensee, as the case may be.
>
> (5) *If no objection is lodged within the time limited for that purpose by subsection (4), the Board or licensee, as the case may be, may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (2).* (emphasis added)

[10] Based on the above provisions, the wayleave procedure under s. 53 of the Electricity Act 1949 would entail the following steps:

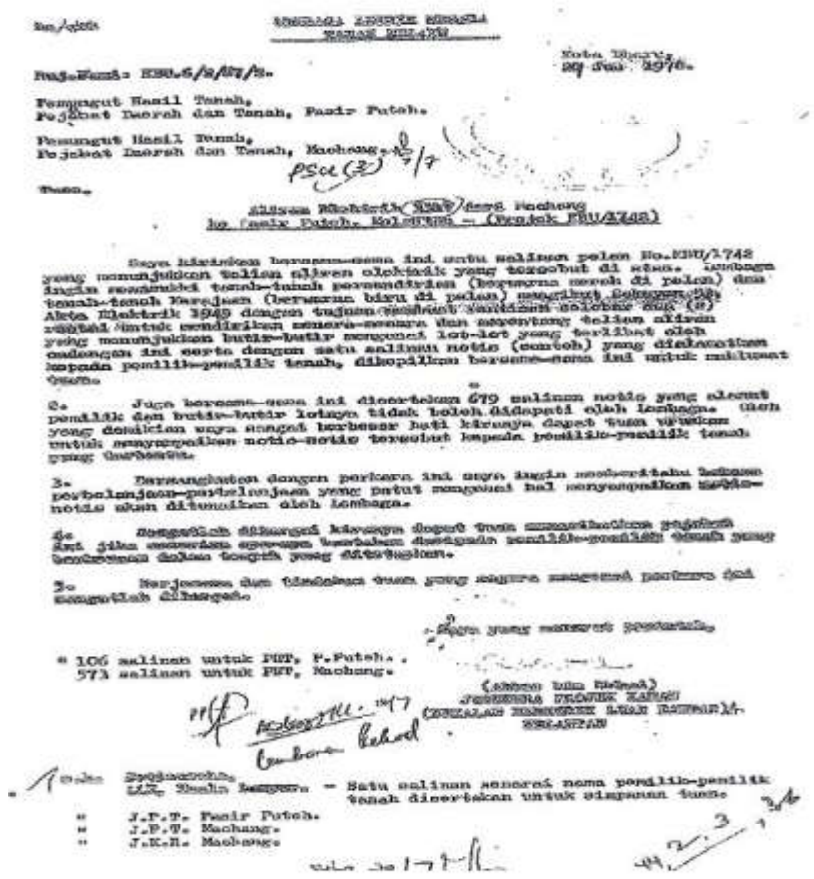
(i) LLN/TNB to identify the lands affected or involved in the project;

(ii) LLN/TNB to write to the state authority for permission, and to inform the state authority of the lots involved or affected in the project;

(iii) the State Authority (being the authority with all the material information and records as to land proprietorship and the authority to "inquire into any objections") shall then issue the statutory notices in the Form prescribed under the Fourth Schedule of the Electrcity Act 1949 ("statutory notice") to all land owners affected by the project; and

(iv) landowners who were served the statutory notice may lodge an objection against the wayleave within 14 days from the service of the statutory notice; and

[11] If there were no objections by the landowners, then LLN/TNB shall be deemed to have obtained the appropriate wayleave to enter into the land and erect the necessary apparatuses for the supply of electricity. In due compliance with the above procedures, the respondent had first identified that the subject land, formerly held under title No. NEMR 277, Lot 90, Daerah and Mukim Ulu Sat, Jajahan Machang, Kelantan, will be affected by the project. *Via* a letter dated 29 June 1978 the respondent had applied for the permission of the State Authority to proceed with the wayleave procedure against all the affected lands (which also included the subject land). In the same letter, the respondent had sought the assistance of the State Authority to serve the statutory notices to the landowners of which the addresses were within the State Authority's record:



Pejabat Daerah dan Tanah, Pasir Putih.

Pejabat Daerah dan Tanah, Machang.

Tuan,

Alinan Notis(-notis) Seksyen Machang
ke Pasir Putih, Kelantan — (Projek PSU/2748)

Saya diarahkan bersama-sama ini untuk salinan pelan No.NEM/1748 yang menunjukkan talian elektrik yang tersebut di atas. Lembaga ingin mendirikan tanah-tanah pencawangan (bersama merah di pelan) dan tanah-tanah berjalan (bersama biru di pelan) mengikut Seksyen 28 Akta Elektrik 1949 dengan tujuan tersebut tertakluk notices ada (#) untuk mendirikan menara-menara dan mengatur talian elektrik yang menunjukkan butir-butir mengenai lot-lot yang terlibat oleh cadangan ini serta dengan satu salinan notis (contoh) yang diakreditkan kepada pemilik-pemilik tanah, dihapuskan bersama-sama ini untuk maklumat tuan.

2. Juga bersama-sama ini dikertakan 679 salinan notis yang akan pemilik dan buku-buku lotnya tidak boleh didapati oleh Lembaga. Oleh yang demikian saya sangat berharap hati kiranya dapat tuan perlukan untuk menyampaikan notis-notis tersebut kepada pemilik-pemilik tanah yang berkenaan.

3. Bersangkutan dengan perkara ini saya ingin memberitahu bahawa perbelanjaan-perbelanjaan yang patut mengenai hal menyampaikan notis-notis akan ditanggung oleh Lembaga.

4. Sangatlah dikargai kiranya dapat tuan menyelesaikan perkara ini jika mungkin dalam tempoh satu bulan dari tarikh surat ini.

5. Kerjasama dan bantuan tuan yang segera mengenai perkara ini sangatlah dihargai.

Saya yang menurut perintah,

* 106 salinan untuk PUP, P.Putih.
573 salinan untuk PUP, Machang.

(ABDUL LIM BIN)
PENOLONG PEGAWAI KANAN
(PENGARAH KESEKSYEN LUAR BANDAR)
KELANTAN

Salinan kepada,
Tuan Tanah berkenaan - Satu salinan semerat nama pemilik-pemilik tanah dikertakan untuk simpanan tuan.

" J.P.T. Pasir Putih.
" J.P.T. Machang.
" J.K.K. Machang.

[12] It was then identified that the subject land (at that time) was owned by Noriah bt Idris and Awang b Botook. In total, it was identified that there were 106 statutory notices to be issued for the district of Pasir Puteh and 573 statutory notices to be issued for the District of Machang. The State Authority (being the District & Land Office of Machang, Kelantan) undertook to serve all of the statutory notices.

[13] By 31 December 1978, the LLN/TNB proceeded to seek an update on the service of the statutory notices from the State Authority. The State Authority replied *via* its letter dated 4 January 1979 that all of the requisite statutory notices had been appropriately served to all affected landowners with the last notice being served on 1 January 1979:

Surat Kami: PTH. 9/78/(24)

Bil. Surat Tuan: .....

Telipon: Machang 51206 51-026

PEJABAT TANAH DAN JAJAHAN,
MACHANG, KELANTAN.

Machang 4hb. Januari, 19 79

Jurutera Projek Kanan,
(Bekalan Elektrik Luar Bandar),
Kelantan.

6 JAN 1979

Tuan,

Aliran Elektrik 33kV dari Machang ke
Pasir Puteh, Kelantan (Projek KBU/1742)

Saya dengan hormatnya merujuk kapada surat tuan Bil: KBU. 6/2/67/26 yang bertarikh 31hb. Disember, 1978 mengenai perkara yang diatas, dan memaklumkan bahawa notis kapada tuan tanah terakhir hanya dapat diserahkan pada 1.1.79.

Sekianlah adanya.

Saya yang menurut perintah,

(Hisham b. Hashim),
Penguasa Hasil Tanah
Machang.

HBH/mah

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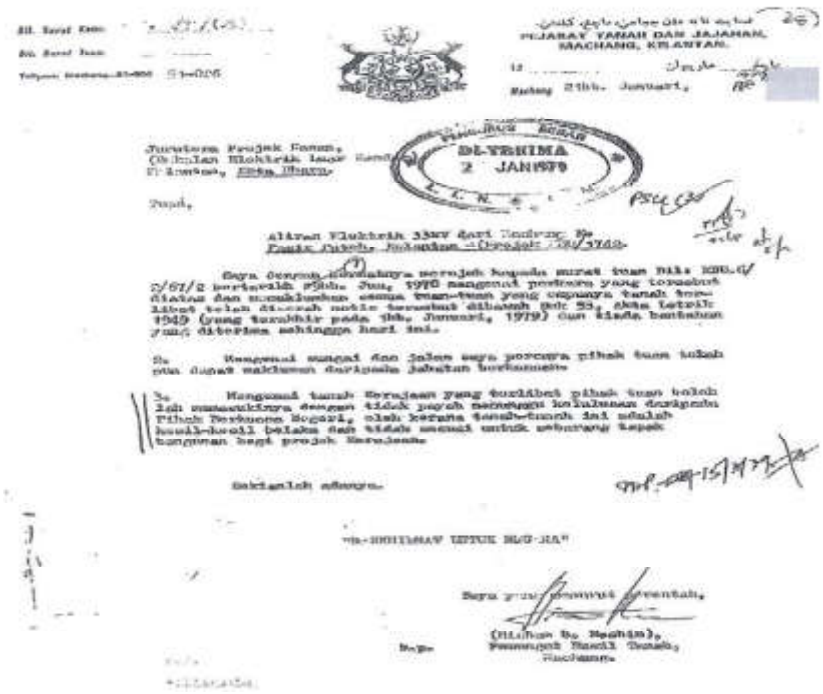
[14] Thereafter, past the 14 statutory days for objection by any landowner, the State Authority informed *via* its letter dated 21 January 1979 that none of the landowners had lodged any objections against the intended wayleave. Thus, in absence of any objections against the wayleave, the LLN/TNB shall be deemed to have legally obtained a right of entry and right for wayleave over the lots affected by the project:


PEJABAT TANAH DAN JAJAHAN,
MACHANG, KELANTAN.
DITERIMA
2 JAN 1979

[15] Upon obtaining the wayleave, LLN/TNB had already entered the subject land and erected the necessary electrical transmission towers and lines in furtherance of the project.

[16] In the present case, the wayleave was obtained in 1979 and the law as it stood at that time did not statutorily require that the wayleave be endorsed onto the instrument document title of the subject land (prior to the enforcement of s. 53(9A) which was added *via* the Electricity (Amendment) Act 1984). Thus, there was no contravention of any law at that time, *albeit* that the wayleave was never endorsed onto the subject land's instrument document title.

The Appellant's Subsequent Proprietorship Of The Subdivided Lot (After The Wayleave Was Legally Obtained)

[17] The subject land was subsequently held under title number GM 2689, Lot 2092, Kg Belukar, Mukim Ulu Sat, Jajahan Machang, Kelantan which later was divided into five separate lots. One of the subdivided lots was held under title number PT 3991, HSM 1420, Kg Belukar, Mukim Ulu Sat, Jajahan Machang, Kelantan ("subdivided lot"). Approximately 38 years since the obtainment of the wayleave, the appellant became the registered proprietor of the subdivided lot on 5 March 2017.

[18] It is critical to highlight that the electrical tower and lines had already been erected on the subdivided lot at the time the appellant purchased the subdivided lot. Thus, the appellant had purchased the subdivided lot despite his own full knowledge that there was already in existence LLN/TNB's electrical tower and lines erected upon a portion of the subdivided lot.

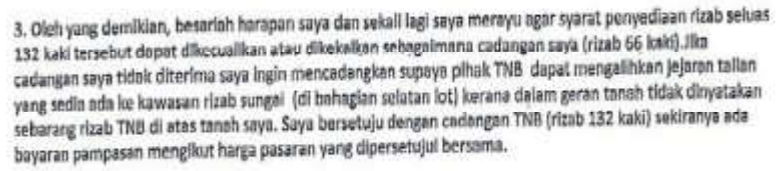
[19] Upon the appellant's ownership over the subdivided lot, the appellant then applied for a planning permission for a proposed layout plan for the development of nine units of terraced houses on the subdivided lot ("the application").

[20] In response to the application (and in continuance of the legally obtained wayleave since 38 years ago) the Planning Authority of the District of Machang *via* a letter dated 30 October 2017 had informed the appellant of its conditional approval (pre-conditioned and subject to the preservation of the original 132 feet reserve area for TNB's electrical towers and lines originally obtained *via* the wayleave procedure *circa* 1978 to 1979).

[21] Dissatisfied with the conditions placed by the Planning Authority, the appellant appealed to TNB *via* a letter dated 3 December 2017 requesting that the reserve area be cut down to half from 132 feet to a mere 66 feet (which was well below the required reserve area under TNB's guideline and less than the reserve area legally obtained *via* the wayleave). In the same letter, the appellant had unequivocally admitted to having prior knowledge of the prior erection of TNB's electrical tower and lines (well before the appellant's purchase of the subdivided lot) when the appellant proposed that the existing tower and electrical lines be moved to run along the subdivided lot's rizab sungai in the southern area of the subdivided lot.

[22] Thus, even if there was the hypothetical 'deprivation of use of land' as complained by the appellant (which there was none), it was the appellant himself who had knowingly bought himself into the 'deprivation' as the author of his own 'misfortune'. If the appellant was truly genuine with his endeavour to develop the subdivided lot (with full knowledge of TNB's structures already erected upon the subdivided lot) he should have enquired into the legality of TNB's electrical tower and power lines before he proceeded to buy into the 'risk' of being 'deprived' of the use of certain

portions of the subdivided lots which were already reserved for the erection of TNB's structures. It is more probable than not that the appellant had bought into the subdivided lot with the intention to turn a quick profit against TNB. This is further reflected by the appellant's outright 'readiness' to abandon the appellant's original development plan


3. Oleh yang demikian, besarlah harapan saya dan sekali lagi saya merayu agar syarat penyediaan rizab seluas 132 kaki tersebut dapat dikecualikan atau dikekalkan sebagaimana cadangan saya (rizab 66 kaki).Jika cadangan saya tidak diterima saya ingin mencadangkan supaya pihak TNB dapat mengalihkan jejaran tallan yang sedia ada ke kawasan rizab sungai (di bahagian selatan lot) kerana dalam geran tanah tidak dinyatakan sebarang rizab TNB di atas tanah saya. Saya bersetuju dengan cadangan TNB (rizab 132 kaki) sekiranya ada bayaran pampasan mengikut harga pasaran yang dipersetujui bersama.

and concede the 132 feet reserve area in case TNB was willing to agree to pay compensation for the 132 feet reserve area that TNB (that TNB had legally obtained wayleave to enter some 38 years before the appellant's proprietorship).

[23] The respondent *via* its letter dated 22 January 2018 had rejected the appellant's request and insisted on the preservation of the 132 feet reserve area obtained *via* the wayleave. Again, the appellant *via* its surveyor submitted another appeal now to the Planning Authority against the respondent's insistence on the 132 feet of reserve area. The Planning Authority rejected with finality the appellant's appeal and also insisted on the same 132 feet of reserve area for which the respondent had lawfully obtained the wayleave.

[24] Following the Planning Authority's rejection, the appellant commenced the suit before the High Court primarily citing that the respondent had never lawfully obtained any wayleave and that they had trespassed and continuously trespassed onto the appellant's subdivided lot.

[25] After full trial, the learned Judicial Commissioner (now High Court Judge) had dismissed the appellant's claim primarily on the following grounds:

(i) the respondent has proven that it has appropriately complied with all the requisites and procedures laid down under s. 53 of the Electricity Act 1949 and thus, had lawfully obtained the wayleave to enter and erect the TNB structures on top of the subject land (now subdivided lot);

(ii) the evidence *via* the letters issued by the State Authority confirming successful service of the statutory notice and non-objection against the statutory notice were sufficient to prove that the necessary procedures prescribed to serve the statutory notice under the provision had been duly complied with (see *Mahani Desa & Yang Lain lwn. Tenaga Nasional Bhd* [2021] CLJU 1567; [2021] 1 LNS 1567; [2021] MLJU 1833);

(iii) since TNB's entry and erection of the TNB structures had been legally carried out 38 years before the appellant's ownership of the subdivided lot, the appellant's subsequent ownership of the subdivided lot does not revoke or invalidate the wayleave duly obtained by TNB; and

(iv) since TNB's wayleave shall survive despite the appellant's subsequent ownership of the subdivided lot, TNB had never trespassed or continuously trespassed upon the appellant's subdivided lot.

[26] Disgruntled by the High Court's dismissal of his claim, the appellant filed the present appeal before us against the entirety of the High Court's decision.

The Appeal Before Us

[27] We have thoroughly perused the memorandum of appeal, the High Court's grounds of judgment, the record of appeal and the parties' respective written submissions and we are of the view that the instant appeal before us can be simply disposed of by determining the following singular issue:

> Whether the High Court was correct in finding that the Respondent had duly complied with all of the requisites and statutory procedures under section 53 of the Electricity Act 1949 to obtain and maintain its Wayleave on top of the Appellant's subdivided lot.

Whether The High Court Was Correct In Finding That The Respondent Had Duly Complied With All Of The Requisites And Statutory Procedures Under s. 53 Of The Electricity Act 1949 To Obtain And Maintain Its Wayleave On Top Of The Appellant's Subdivided Lot

[28] The chief complaint mounted by the appellant was that the High Court had failed to appreciate that the respondent had insufficient evidence to prove that the proper procedures had been complied with so as to entitle the respondent a wayleave over the subdivided lot. This main complaint had been mounted in reliance of a few sub-contentions:

(i) the respondent had failed to adduce the statutory notice itself and the proof of service of the statutory notice to the previous owner of the subject land;

(ii) the respondent's wayleave could not have been legitimate considering the fact that the wayleave was never registered or endorsed upon the instrument document title;

(iii) the respondent's wayleave could not have been legitimate considering the fact that the respondent had never paid any compensation to the previous owner of the subject land; and

(iv) there had not been any wayleave agreement entered so as to entitle the respondent to the wayleave.

[29] In any case, we should first be minded of the basic law, concepts, and principles underlying the granting of wayleave. Wayleave *per se* is self-explanatory. It is simply a land right for TNB to have right of way to enter and erect electrical structures for the purposes of supplying electricity under the prevailing law at the time. Of course the granting of the wayleave is conditional to specific requisites and procedures.

[30] Now, the first point in divergence (and even confusion on the part of the appellant) is on the manner and method that the same singular wayleave can be obtained. The first method would be to initiate the procedures ("wayleave procedures") enumerated within s. 53 of the Electricity Act 1949. Upon compliance with these procedures, then TNB shall be deemed to have obtained a valid wayleave.

[31] On the other hand, the same 1949 Act also provides for 'savings' or 'exception' in cases where the right of entry and wayleave can be mutually negotiated and codified into an agreement ("wayleave agreement"). This saving or exception is prescribed under s. 56 of the Electricity Act 1949.

[32] Section 56 of the 1949 Act is not the be all and end all provision to determine the validity of a wayleave. Nor should s. 56 of the 1949 Act be read conjunctively with s. 53 at all times. The only instance where s. 56 becomes relevant is when the entry and wayleave of TNB had allegedly been codified under an agreement. In such case, that an agreement shall govern TNB's wayleave into any private land, then the parties are exempt from redundantly complying with the procedures under s. 53 of the same 1949 Act.

[33] In both respective cases of obtainment of wayleave (either *via* wayleave procedure or wayleave agreement), the burden lies on TNB to prove that either all the requisites and procedures of the wayleave procedure had been complied with (or for TNB to prove the existence of the supposed wayleave agreement entered into). It is certainly not incumbent upon TNB to prove both at the same time.

(i) for wayleave to be obtained *via* the wayleave procedures under s. 53 of the Electricity Act 1949 (now s. 11 of the Electricity Supply Act), the failure to serve the statutory notice to the landowner (or service of statutory notice to an unrelated third party) shall render the purported Wayleave and entry by TNB to be unlawful (see: *Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v. Tenaga Nasional Bhd; Ng Ah Boon (Third Party)* [2010] 1 CLJ 625);

(ii) for obtainment of wayleave *via* an alleged wayleave agreement under s. 56 of the Electricity Act 1949 (now s. 15 of the Electricity Supply Act 1990), the failure to substantiate or prove the existence of the alleged wayleave agreement shall also render the purported wayleave and entry by TNB to be unlawful (see: *Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd* [2000] 1 CLJ 695; [2000] 2 MLJ 133).

[34] We are aware that there was a prior Court of Appeal decision in *Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd* [2000] 1 CLJ 695; [2000] 2 MLJ 133 that had expressed (although with due respect, *per incuriam*) that a wayleave agreement under s. 56 (s. 15 in the new Act) can only be realised after due compliance with the procedures under s. 53 (s. 11 of the New Act). However, we must respectfully depart from this position as the literal words within s. 56 as a savings or exeptions provision unequivocally and plainly stipulate that:

> *NOTHING in Section 53* or Section 55 *shall (a) AFFECT the right of the Board or a licensee to enter into an agreement, commonly known as a wayleave agreement, with the owner or occupier of any land for the purpose of carrying a supply line across the land; …* (emphasis added)

[35] Considering the plain and literal stipulation above, it is clear that the entire pre-requisites and procedures under s. 53 should not override a wayleave that was obtained *via* a wayleave agreement entered into under s. 56 of the 1949 Act.

[36] Nor did the Court of Appeal in Dolomite expand or justify its brief finding *per incuriam*:

> *All that we need to say on these provisions is as follows. Before the appellant can take advantage of s. 56 of the Electricity Act 1949, it must satisfy s. 53 of the said Act, in particular the procedure prescribed by sub-ss. (2), (3) and (4).* Unfortunately, the appellant was unable to produce the document prescribed by s. 53 of the said Act. (emphasis added)

[37] Nevertheless, save and except for this singular finding *per incuriam* (which we respectfully depart from) the Court of Appeal still astutely concluded that a wayleave *via* a pleaded wayleave agreement cannot legally stand if TNB fails to substantiate or prove the existence of the alleged wayleave agreement:

> Under these circumstances, we are entirely satisfied that **there was no wayleave agreement as pleaded by the appellant.** The learned judge was accordingly right in holding against the appellant upon this issue. (emphasis added)

[38] The above considered, the appellant's argument that a wayleave was governed 'only' by s. 56 of the Electricity Act 1949 is in our view, misplaced. The remedy provided under the two provisions was one and the same wayleave. The only difference being the manner, method, and procedure for obtaining the wayleave by the respondent . If the respondent pleads that it had opted for the wayleave procedure, then the respondent bears the burden to prove due compliance with the procedures. On the other hand if the respondent pleads that they had entered into a wayleave agreement, then the respondent bears the burden to prove the existence of the alleged wayleave agreement.

[39] Since the respondent here pleaded that it had obtained a wayleave *via* the wayleave procedures, then they need only to prove that they had duly complied with all the requisites and procedures under s. 53 of the Electricity Act 1949. Hence, based on this premise, we will now examine the respondent's defence.

[40] One of the appellant's primary argument was that the respondent had failed to adduce the actual statutory form, and proof of service of the statutory form on the previous owners. On the contrary, the respondent sought to prove due compliance of the requirement to serve the statutory notice to the registered proprietors at that time *via* its reliance on the State Authority's service of the statutory notice and inquiry into the wayleave procedure. So the question arises on whether or not the reliance upon (and involvement of) the State Authority in the service of the statutory notice and the inquiry was appropriate under the provision.

[41] The question above can be answered *via* a plain reading and appreciation of sub-ss. (2) and (4) of s. 53 of the Electricity Supply Act 1949. Under sub-s. (2) it is a statutory requirement that the State Authority be involved in the wayleave procedure as it was incumbent upon TNB to first apply for and obtain the State Authority's permission. Upon the State Authority's permission, it was the State Authority that "will enquire into any objections that have been made". Under sub-s. (4), the affected landowners can lodge an objection against the wayleave by lodging an objection to the Collector of Land Revenue (who in turn shall "give notice of the objection to the State Authority"…).

[42] Considering the fact that the State Authority was indeed actively involved in the statutory enquiry under the wayleave procedure (and the fact that the State Authority would have the necessary information and record of the landowners' addresses and particulars) it was abundantly proper and reasonable for TNB to cooperate with the State Authority to optimise the procedure and maximise the probability to ensure that the statutory notice be duly served on all of the affected landowners.

[43] For completeness, there was neither negative stipulation nor restriction under the 1949 Act that would restrict TNB from cooperating with and relying on the State Authority (Land Office) to serve the statutory notices to the landowners.

[44] Thus, since the State Authority itself *via* its letters dated 4 January 1979 and 21 January 1979 had clearly confirmed that the statutory notices had been duly served to all of the affected landowners (inclusive of the previous landowners of the subject land), it is reasonable to conclude that the respondent had successfully and sufficiently proven that the statutory notice had been duly served to the previous owners of the subject land. Thus, we are in agreement with the learned judge who correctly found that the

procedures undertaken by TNB with the cooperation and involvement of the State Authority were sufficiently proper and were in full compliance of s. 53 of the Electricity Act 1949 at the time (see also *Mahani Desa & Yang Lain lwn. Tenaga Nasional Bhd* [2021] CLJU 1567; [2021] 1 LNS 1567; [2021] MLJU 1833):

> [18] Menerusi surat tersebut, pihak LLN telah memaklumkan kepada Pemungut Hasil Tanah Jajahan Pasir Mas berkaitan satu set plan yang menunjukkan talian aliran eletrik yang berkaitan serta hasrat LLN untuk memasuki tanah-tanah persendirian yang terkesan. Ia dilaksanakan berdasarkan kepada seksyen 53 Ordinan Letrik 1949 (nama perundangan ketika itu sebelum ditukar nama kepada Akta Letrik 1949). Ia bagi tujuan pembinaan menara-menara dan merentang di atasnya talian elektrik. *LLN turut mengemukakan senarai yang mengandungi butiran lot-lot tanah yang terlibat beserta satu salinan notis yang dialamatkan kepada para pemilik.*
>
> [19] Mahkamah mendapati bahawa LLN pada ketika itu, telah melampirkan 940 notis kemasukan di bawah seksyen 53 Akta 116 ke atas pemilik-pemilik tanah berkenaan bagi mendapatkan hak izin lalu. *Notis tersebut adalah untuk disampaikan oleh Pejabat Tanah Jajahan Pasir Mas kepada setiap pemilik.* Di dalam surat tersebut tidak menyenaraikan nama-nama pemilik namun di dalam notis dinyatakan "sapertimana disenarai yang dikembarkan bersama- sama ini". Senarai yang dikembarkan adalah satu plan yang menunjukkan kawasan jajaran laluan Talian Penghantaran Elektrik 33kV yang turut meliputi tanah tersebut.
>
> [20] Plaintif menghujahkan bahawa tiada dokumen yang dapat membuktikan notis tersebut telah diserahkan kepada pemilik tanah tersebut ketika itu dan Plaintif sendiri hanya membuat pernyataan tanpa keterangan secara lansung memandangkan pemilik tanah tersebut telahpun meninggal dunia. *Mahkamah berpandangan bahawa setakat keterangan yang ada, tidak memungkinkan mahkamah ini untuk merumuskan secara tuntas bahawa Defendan tidak memenuhi keperluan di bawah seksyen 53 Akta 116 untuk mengemukakan notis kemasukan kepada pemilik tanah tersebut ketika itu.*
>
> [21] Selain itu Mahkamah turut mendapati bahawa di dalam kes ini, LLN melalui surat bertarikh 12/1/1974 telah membuat pembayaran tuntutan penghantaran notis-notis kemasukan kepada Pemungut Hasil Tanah Jajahan Pasir Mas. Ia dibuktikan melalui ekshibit "TNB-3" di kandungan 10. *Mahkamah berpandangan Pemungut Hasil Tanah Jajahan Pasir Mas adalah merupakan entiti kerajaan yang rasmi dan oleh itu tindakan untuk menyampaikan notis tersebut adalah merupakan tindakan rasmi. Sejajar dengan itu mahkamah boleh menganggap tindakan rasmi tersebut telah dilaksanakan mengikut aturan.* Ia bersandarkan kepada seksyen 114 Akta Keterangan 1950 di misalan (e) …
>
> (emphasis added)

[45] The other complaint raised by the appellant was that the wayleave was invalid as it was never endorsed or registered onto the instrument document title of the subject land. Suffice that we reiterate our initial finding above that

A the subject wayleave in this case was obtained in 1979 prior to the enforcement of s. 53(9A) which was added later *via* the Electricity (Amendment) Act 1984). Thus, at the material time, the law did not statutorily require for wayleaves to be endorsed upon the instrument document title. Thus, the respondent cannot be faulted for the B non-registration or non-endorsement of the wayleave as the law did not require the respondent to do so at that time. Thus, the appellant's contention here also does not at all impugn the validity of the respondent's wayleave. Learned counsel for the respondent had aptly referred to the case of *Oakfield Enterprises Sdn Bhd v. Tenaga Nasional Bhd* [1998] CLJU 430; [1998] 1 LNS 430; [1998] MLJU 70 which had dealt with this exact issue:

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> *With respect, I cannot see how the LLN can be faulted for omitting to submit those documents under the circumstances discussed earlier. When the Collector gave the authority to the LLN to enter the said land to carry out the said project on 9 November 1974, there was no such provision.* With the introduction of the said section 53(9A), the Registrar is only obliged to make such a note on the D register document of titleafter the coming into force of the said subsection if the LLN forwards such a document to him. From my reading, the said subsection is not a mandatory provision and as such I cannot see how non-compliance of that subsection can be said to be fatal.
>
> (emphasis added)

E **[46]** The appellant also contended that the absence of any compensation paid was also indicative of an improperly obtained wayleave. On the contrary, the non-payment of compensation was aptly explained by the respondent and was appropriately appreciated by the learned judge. There were three reasons why no compensation was paid under the wayleave F procedure specifically in this case:

(i) firstly, the initial subject land at that time (prior to subdivision) was categorised as an agricultural land and was in fact a rice plantation at the time. The subject land was subject to an express condition that the land must be solely used for rice cultivation. *Thus, since the subject land was* G *only intended to be a rice plantation, then the TNB structures would not affect the use and utility of the subject land as a rice plantation* (emphasis added). Considering this fact, the State Authority did not offer any compensation to the landowners when the wayleave procedure was underway;

(ii) secondly, despite the State Authority's service of the statutory notice to H the landowners and the State Authority's call to enquire into landowners' objections (if any), *there were no objections mounted by any of the landowners as against the wayleave and even as against the non-offer of compensation* (emphasis added); and

I (iii) the fact that 38 years had passed since the initial entry by TNB without any objections or appeal for compensation whatsoever by the previous landowners (despite the clear erection of the electrical tower and power

lines) resoundingly proved that it was more probable than not that the previous owners had full knowledge and notice of the wayleave and still had no objections against the non-offer of compensation by the respondent. We refer to the case of *Fairise Odyssey Sdn Bhd v. Tenaga Nasional Bhd* [2014] CLJU 842; [2014] 1 LNS 842; [2015] 8 MLJ 625 which had held the following:

> 43. On the evidence, *it is clear that since 1992, the transmission line has been on the subject land.* There is no evidence that any of the original owners had ever objected to the presence of the transmission line. *Where there is a lengthy period during which materials remain on the land without objection or without a request for those materials to be removed, the law does not permit a landowner to assert a claim in trespass.*
>
> (emphasis added)

(The Court of Appeal and Federal Court later affirmed the decision in *Fairise Odyssey* (*supra*) at appeal. See *Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Bhd* [2018] 10 CLJ 281; [2019] 2 MLJ 84; *Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Bhd* [2019] 8 CLJ 20; [2019] 6 MLJ 281).

[47] Considering the justification above, we agree with the learned judge that there was nothing inherently improper or malicious from the non-payment of compensation by the respondent to impugn the validity of the wayleave.

[48] Furthermore, we are in full agreement with the learned judge's finding that the wayleave shall necessary survive and persist despite the subsequent subdivision and change of ownership of the subdivided lot to the appellant. The learned judge astutely referred to the decision in Mahkamah Tinggi Muar Guaman Sivil No: B22NCVC-9-02-2019 *Md Hassan Ibrahim v. Tenaga Nasional*:

> [17] Mahkamah ini telah menolak hujahan Plaintif tersebut dan bersetuju dengan hujahan Defendan bahawa rizab izinlalu rentis dua rantai telah diperolehi sebelum tanah dimiliki oleh Saemah binti Hassan dan kemasukan tersebut adalah ke tanah milik Kerajaan Johor sebelum tanah diracik-racik dan diserahmilik kepada Saemah. Pertukaran hakmilik telah tidak menjadikan hak izinlalu Defendan menjadi tidak sah, dan Mahkamah menggunapakai keputusan Mahkamah Rayuan di dalam kes *Oakfield Enterprise Sdn Bhd v. Tenaga Nasional Berhad* [2010] 8 CLJ 42 yang memutuskan:- "… that *the fact that the appellant became the new registered owner of the said Land with the issuance of new separate titles on 5 October 1988 to replace the original title does not change the fact that the respondent had been authorised by the Land Office of 9 November 1974 to enter the said Land to carry out the installation of high tension cables.* (emphasis added)

[49] Since the respondent's entry into the subject land (and later subdivided lot) was statutorily justified under the prevailing Electricity Act 1949 at the time, it follows that the respondent had not and could not have trespassed or continuously trespassed upon the appellant's subdivided lot. We need only refer to *Oakfield Enterprises* (*supra*):

> I have earlier found that the LLN have entered the said land in 1974 by authority of the law. *Justification of its entry was afforded by operation of law and hence its entry upon the said land is not trespass if it be justifiable.* It is trespass to place anything on or in land in the possession of another but in the instant case, *since the erection of the pylons on the saidland was by authority of the law, there cannot be trespass.* The LLN have entered upon the said land under an authority given by law and there is nothing to show that the LLN or TNB subsequently abused that authority. (emphasis added)

(see also *Syarikat Air Negeri Sembilan Sdn Bhd lwn. One Visa Sdn Bhd* [2017] 4 CLJ 718; [2017] 1 MLJ 711).

[50] Upon our deliberations and findings under this heading, we accordingly answer the singular issue under this heading (D) in the positive. The High Court was indeed correct in finding that the respondent had duly complied with all of the requisites and statutory procedures under s. 53 of the Electricity Act 1949 to obtain and maintain its wayleave over of the appellant's subdivided lot.

[51] As an aside, we opine that instead of impugning the validity of the wayleave (and alleging TNB of improperly obtaining a wayleave under the 1949 Act), the appellant should have instead opted and applied for the remedy of requisition for removal or alteration of supply lines under s. 14 of the Electricity Supply Act 1990. However, there is no guarantee that under this provision the respondent's structures will eventually be removed or altered. But the provision does provides the appropriate rules and specific procedures (under sub-ss. (2) to (4) of s. 14 of the Electricity Supply Act 1990) so as to determine either the propriety of a landowner's application for requisition (for removal or alteration) or the propriety of TNB's insistence to maintain or preserve the original state of the TNB structures (see s. 14(1) of the Electricity Supply Act 1990):

> 14. (1) **Where a supply line has been laid,** or posts or equipment **erected, on any land under section 11,** and if any of the persons mentioned in subsection 11(3) desires to use the land in such a manner as to render it necessary or convenient that the line, posts or equipment should be removed to another part of the land, or to land at a higher or lower level, or be altered in form, he may require the licensee, to remove or alter the line, posts or equipment accordingly. (emphasis added)

Our Decision

[52] All of the above deliberations considered, we find that there are no appealable errors in the decision of the learned judge that merited our intervention. The appellant's appeal here is devoid of merit and we hereby dismiss this appeal with costs. Accordingly, the High Court's decision is affirmed.

[53] Finally, we order costs of RM15,000 to be paid by the appellant to the respondent (subject to allocatur).